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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/831,778	05/14/2001	Brian Joseph Roselle	7349	9723

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EXAMINER

PRATT, HELEN F

ART UNIT PAPER NUMBER

1761

DATE MAILED: 06/30/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/831,778

Applicant(s)

ROSELLE ET AL.

Examiner

Helen F. Pratt

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 15 May 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 13, 15, 20 and 21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 13, 15, 20, 21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

**DETAILED ACTION**

~~**DETAILED ACTION**~~

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 13, 15, 20 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Murch et al. 5,549,758 in view of Chang 4,808,330. Palaikis (5,507,968) is used to show a universal fact.

The claims are rejected for the reasons of record cited in the last office action. The claims have been amended to include the limitations of claim 14, which was discussed in the last office action, and to specifically require the use of potassium or sodium lauryl sulfate. However, Murch et al. teach that it is known to use potassium or sodium laurate. These ingredients are assumed to be the same as Hawley's Condensed Chemical dictionary does not disclose a compound of only sodium laurate. Also, Palaikis discloses that that sulfonated alkyls and lauryl sulfates are anionic surfactants. Applicants' specification discloses that sulfonated alkyls such as dodecylbenzene sulfonate are equally useable in the claimed invention (page 6, lines 29-31 and page 7, lines 1-9). The listed surfactants are seen to be functional equivalents. Nothing is seen that the now claimed lauryl sulfate gives better results than the other surfactants. The reference to Palaikis is used to show universal facts

and not to show motivation. In re Wilson, 135 USPQ 442. Therefore, it would have been obvious to substitute one surfactant for another as a functional equivalent in the claimed composition.

### ARGUMENTS

Applicant's arguments filed 5-15-03 have been fully considered but they are not persuasive. Applicants argue that neither of the references teach the claimed surfactant and that Dodecylbenzene sulfonate (DBS) is not stable at either acid or basic conditions. However, applicants' specification lists this surfactant as a functional equivalent to the other surfactants (page 7, lines 1-18). Therefore, absent a showing that better results are seen using the claimed lauryl sulfates, it is seen that the functional equivalent of the DBS is shown.

Applicants argue that the Chung '330 patent teaches away from the present invention and that surfactants such as alkyl benzene sulfonates have problems. However, the reference was used to teach that it is known to use a cation containing compound such as sodium chloride to reduce bacteria on food surfaces (col. 8, lines 26-31) and this teaching is correct whether ABS's are used in the composition or method.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the

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shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication should be directed to Helen F. Pratt at telephone number 703-308-1978.

Hp 6-24-03

  
HELEN PRATT  
PRIMARY EXAMINER